6720-TI-161

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June 1, 2001

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WISCONSIN PUBLIC SERVICE COMMISSION

VIA HAND DELIVERY

Lynda Dorr, Secretary
Public Service Commission of Wisconsin
610 N. Whitney Way
Madison, Wisconsin 53705

Re: Investigation into Ameritech Wisconsin's Unbundled Network Elements
Docket No. 6720-TI-161

Dear Ms. Dorr:

Enclosed for filing, please find the original and nineteen (19) copies of the Initial Brief of Sprint Communications Company L.P. regarding the above-captioned matters.

Please provide me with a filed-stamped copy in the enclosed self-addressed stamped envelope. Please call me at 913-624-6839 if you have any questions regarding this matter.

Very truly yours,

Kenneth A. Schifman

KAS:sjw
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BEFORE
THE PUBLIC SERVICE COMMISSION OF WISCONSIN

Investigation into Ameritech Wisconsin's Unbundled Network Elements	) Docket No. 6720-TI-161)

INITIAL BRIEF OF SPRINT COMMUNICATIONS COMPANY L.P.

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INITIAL BRIEF OF SPRINT COMMUNICATIONS COMPANY L.P.

Sprint Communications Company L.P. (Sprint) submits this Initial Brief. Issue 6 and subparts thereof from the issues list regarding whether Project Pronto architecture should be unbundled is the focus of Sprint's filing. To allow competition in the advanced services market to develop, the Commission can and should unbundle Project Pronto. Sprint also requests that the Commission resolve Issue 3 by ordering Ameritech to have a $0 monthly recurring charge for the High Frequency Portion of the Loop (HFPL) unbundled network element.[1]

I. INTRODUCTION

The Commission must prevent Ameritech from monopolizing high speed data services and order Ameritech to unbundle its fiber and copper loop architecture, dubbed Project Pronto. While Ameritech freely admits that voice services provisioned over Project Pronto are appropriate for unbundling, it denies CLECs the opportunity to purchase on an unbundled basis virtually identical elements of its network for the provision of data services. Like the recent rulings of the Illinois Commerce Commission and the D.C Circuit Court of Appeals

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[1] Sprint generally supports the Briefs of the other CLECs in this case on the remaining issues from the issues list. Sprint reserves the right to address additional issues in its reply brief.

finding that ILEC advanced services are subject to unbundling, this Commission should find that Ameritech must make the network elements that comprise Ameritech's Project Pronto network available on an unbundled basis.[2]

Unbundled access to the Project Pronto network will facilitate competition for advanced services. CLECs need the flexibility to provide high speed data by sharing the local loop. In unbundling the high frequency portion of the loop (HFPL), the FCC stated that access to the HFPL "is vital to the development of competition in the advanced services market, especially for residential and small business consumers."[3]

Ameritech's insistence that line sharing is unavailable to customers served by copper and fiber loop architecture impairs CLECs from offering a service that effectively can compete with Ameritech's broadband service. Ameritech and its corporate parent SBC are building a $6 Billion broadband network (Project Pronto) that effectively freezes CLECs out from providing individualized advanced services offerings. Ameritech states that it likely will suspend its Project Pronto build-out in Wisconsin if the Commission orders it to unbundle the Pronto network.[4] At the same time, Ameritech concedes that it is technically feasible for a CLEC to use the Project Pronto architecture on an unbundled

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[2] Arbitration Decision on Rehearing, Covad Communications Company/Rhythms Links, Inc. and Ameritech Illinois, Docket Nos. 00-0312; 00-0313 (February 15, 2001) ("Illinois Arbitration Decision"); Order, Proposed Implementation of High Frequency Portion of Loop/Line Sharing Service, Docket No. 00-0393 (March 14, 2001) (Rehearing Granted) ("Illinois Line Sharing Order").

[3] Third Report and Order in CC Docket 98-147, Fourth Report and Order in CC Docket 96-98, FCC 99-355 (released 12/9/99) ("Line Sharing Order"), ¶ 5.

[4] Tr. 141, (Chapman Cross).

basis.[5] The Commission should not heed Ameritech's idle regulatory threats. Ameritech will build and use Project Pronto for its own efficiencies and business purposes regardless of the Commission's decision here. It has said many times publicly that the packet switching efficiencies will more than make up for the $6 Billion cost of building Project Pronto.[6]

Because Ameritech is building this network, it has an obligation to unbundle the network elements of which it is comprised. Sprint and the other CLECs are not asking Ameritech to make line shared DSL services available when it has not built that capacity. But when Ameritech upgrades its network to the NGDLC architecture and it (or its affiliate, AADS) is providing DSL services over it, then CLECs should have access to this same functionality on an unbundled basis. Because Ameritech has deployed and continues to deploy the NGDLC architecture, the Commission should order Ameritech to unbundle Project Pronto, offer it as an end to end Unbundled Network Element, allow CLECs to purchase subloops and other elements on an individual basis, and to virtually collocate line cards in Ameritech's next generation digital loop carriers (NGDLCs).

The Commission should ignore Ameritech's policy arguments that unbundling Project Pronto amounts to asymmetrical regulation versus cable modem and other broadband providers. While Ameritech may complain that it is disadvantaged, it cannot escape the simple truth that ILEC provided advanced

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5 Tr. 1212 (Flatt Cross).

6 Ex. 31, p. 1 ("Expense and capital savings alone are expected to offset the cost of the entire initiative.").

services are subject to the unbundling and resale requirements of Section 251(c)(3) and (4) of TA 96. The FCC has so held on several occasions and the Circuit Court of Appeals for the D.C. has made an identical ruling twice already this year -- most recently on April 20, 2001.[7] There the Court ruled that "we find no error in the Commission's conclusion that it can apply the § 251(c) (unbundling and resale) duties to a firm that met the § 251(h) criteria on February 8, 1996 (definition of ILEC) *and* is still providing 'exchange access' or 'telephone exchange service.'"[8] Conclusively, the FCC and the courts have ruled that advanced services provided by ILECs are subject to the unbundling requirements of Section 251(c)(3) of TA 96. Ameritech discounts CLECs as advanced services competitors because it knows that if it is successful in making its advanced services architecture immune from unbundling, Ameritech's only true competitors will be the cable modem providers. This Commission will ensure an Ameritech/cable modem provider duopoly if it does not unbundle Project Pronto. Lack of additional CLEC competition to the advanced services provider mix will lead to less innovation and higher prices for consumers.

No other evidence is necessary. But further confirmation that Ameritech's Project Pronto network is subject to the unbundling requirements of the Act is found in a recent statement issued by Congressman W.J. "Billy" Tauzin in

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[7] In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, Remand Order; CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-78, 98-91, FCC 99-413, 15 FCC Rcd 385, (Released 12/23/99) ("Remand Order"); Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 24012 (1998); ASCENT v. FCC, 235 F.3d 662 (D.C.Cir. 2001); WorldCom, Inc. v. FCC, 2001 U.S. App. LEXIS 7225, No. 00-1002, Consolidated with 00-1062, 00-1070 (D.C. Cir. April 20, 2001).

[8] WorldCom, Inc. v. FCC, at *12.

support of legislation he introduced in the 107th Congress to exempt ILECs from the unbundling requirements for advanced services.

> Currently, there are regulations imposed upon the broadband services and facilities provided by incumbent local exchange carriers (ILECs) that are not imposed upon any other broadband carriers.
>
> **ILECs must provide their facilities, even brand new facilities, on an unbundled basis to competitors at regulated prices.** ILECs must resell their broadband services to competitors at wholesale rates, which no other carrier is required to do.[9]

Though Sprint respectfully disagrees with the proposed legislation, the fact that it has been introduced to remove unbundling obligations for advanced services sheds light on Ameritech's existing unbundling obligations. While Congressman Tauzin's legislation (if passed in its current form) would exempt Ameritech from unbundling Project Pronto, it is undeniable that **current law** requires Ameritech to provide its facilities on an unbundled basis to CLECs.

Ameritech also argues that the NGDLC Project Pronto architecture contains packet switching and the FCC conclusively has determined that packet switching is not available as a UNE. Packet switching can be unbundled in two ways. First, the FCC permits packet switching to be unbundled as a UNE if four criteria are satisfied; and those criteria are satisfied here.[10] Second, even if its found that one or more of the FCC packet switching criteria are not met, this Commission has the authority - from the FCC and in state law - to unbundle network elements beyond the FCC's current list of UNEs if the impair test from

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[9] Statement of Congressman W.J. "Billy" Tauzin issued on April 25, 2001, Accessed at: http://energycommerce.house.gov/107/news/04252001_193.htm (emphasis added).

[10] See 47 CFR § 51.319(c)(4).

FCC Rule 51.317(b) is satisfied.[11] Sprint clearly demonstrates that the impair test is met and that the Project Pronto elements must be unbundled.

Ameritech claims that CLECs are not impaired without access to Project Pronto on an unbundled basis because CLECs have other broadband alternatives. Ameritech is wrong. The impair requirements of FCC rule 51.317 are satisfied. The alternatives offered by Ameritech are unappealing and do not cure the substantial impairment to CLECs. The Broadband Service is offered to CLECs only on a resale basis. CLECs cannot provide differentiated offerings from those of Ameritech's affiliate, AADS, and Ameritech can unilaterally terminate the Broadband Service Offering. The option of using the existing copper network is equally unavailing since Ameritech is building Project Pronto to offer advanced services to the market that cannot receive advanced services now. The option of accessing the old network limits the number of customers available for the CLECs by some 20 million in SBC territory. Indeed Ameritech asserts that through its Project Pronto upgrades in Wisconsin it can provide DSL service to more than 87% of its access lines.[12] CLECs will not be able to access a population anywhere close to that market size if denied unbundled access. Finally, the FCC confirmed that DSLAM collocation at the remote terminal is "likely to be costly, time consuming, and often unavailable."[13] In sum, CLECs are

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11 47 CFR § 51.317(b)(4): W.S.A. §§ 196.219(f) and 196.03(6).

12 Ex. 136. Ameritech Wisconsin 2001 Construction Plan, p. 21 (Submitted by Staff as late filed exhibit on April 11, 2001).

13 In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability And Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket Nos. 98-147 and 96-98, FCC 01-26 (Released 1/19/2001) ("Line Sharing Reconsideration Order"), ¶ 13.

impaired and cannot compete on equal terms with Ameritech without unbundled access to the network elements that make up Project Pronto.

The prescription to cure these ills is to permit line sharing and unbundled access over Project Pronto. Ameritech should not be permitted to engineer its network to effectively monopolize advanced services. Despite the alternatives, CLECs are impaired under the legal standard in TA 96, Section 252(d)(2)(B) and Rule 51.317(b). The fiber and copper architecture utilized by Ameritech does not magically eliminate its duties to unbundle its monopoly bottleneck loop plant and offer CLECs access to all features and functionalities of UNE loops.

The implications of the Commission's decision on the unbundling of Project Pronto are far-reaching. If not unbundled, Project Pronto will destroy the opportunity for CLECs to provide advanced services. Sprint and others will not have a similar ubiquitous network, nor have the ability to provide competitively different offerings that benefit Wisconsin consumers. Besides freezing out CLECs that provide advanced services, this case has potentially life-threatening implications for all CLECs that lease UNEs from Ameritech to provide voice services. The explanation is simple. Ameritech testified that a network element that contains packet switching is unavailable to CLECs on a UNE basis.[14] Also, Ameritech confirms that it is replacing its current voice tandem switches with packet switches and will switch voice using ATM technology (VOATM).[15] Packet switching is the network of the future for both data and voice. The Commission must reinforce its commitment to develop competition and find that packet

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[14] Tr. 182 (Chapman Cross).

switching must be available to CLECs on an unbundled basis. Otherwise, advanced services competition will never develop and then eventually voice local competition in Wisconsin will die as Ameritech continues to upgrade its network.

II. PROJECT PRONTO TECHNOLOGY AND THE SPECIFICS OF SPRINT'S UNBUNDLING REQUEST

A. Project Pronto Technology

Ameritech's corporate parent, SBC, is investing $6 Billion in the 1999 to 2002 timeframe "to bring fiber facilities much closer to neighborhoods across its thirteen-state region. This deployment of facilities will drastically increase the availability of DSL to consumers . . ."[16] "The deployment of fiber and next-generation remote terminals will enable SBC to overcome loop length and line condition limitations in its network."[17] The end result of Project Pronto is to bring fiber closer to the home "so that DSL services will be available to approximately 80% of SBC's customers" territory-wide and 87% of Ameritech Wisconsin's customers.[18]

While the benefits of increasing the market for DSL are apparent and worth investing a large sum of money, the Project Pronto network has additional benefits. SBC claims in its Investor Briefing materials that the "network efficiency improvements alone will pay for this initiative."[19] Moreover, while voice traffic

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15 Ex. 136, p. 2; pp. 9-10.

16 Tr. 103 (Chapman Direct)

17 Ex. 32, p. 4. Loop lengths with Project Pronto will be 12,000 feet or less. Tr. 148 (Chapman Cross).

18 Second Memorandum and Order, *In the Matter of Ameritech Corp. and SBC Communications, Inc. for Consent and Transfer Control of Licenses*, CC Docket No. 98-141, FCC 00-336 (Released September 8, 2000) ("Project Pronto Waiver Order"), ¶ 4; Ex. 136.

19 Ex. 32, p. 2.

today is predominantly circuit switched, the deployment of Project Pronto "will give SBC the flexibility to readily move to other voice protocols, including voice over ATM, voice over ADSL and, ultimately voice over IP."[20]

The benefits to SBC/Ameritech of building the Project Pronto network are well-established. SBC/Ameritech will be able to provide DSL services to a much larger customer base and will gain tremendous network efficiencies. The unbundling of Project Pronto requested by the CLECs does not affect that basic business proposition. Ameritech presented no evidence regarding the costs of unbundling Project Pronto. The issue for the Commission to decide is not whether Project Pronto will be deployed, but when it is deployed, does the law require that the individual elements be unbundled. The answer is yes. But first, an explanation of the actual piece parts of the Project Pronto network is necessary background information.

Generally, SBC plans to deploy (1) Next Generation Digital Loop Carriers (NGDLC) at its remote terminal sites; ADSL Digital Line Unit Cards (ADLU cards, or generically, plug-in card) plugged into the its NGDLCs; (3) Optical Concentration Devices (OCDs) in its central offices; and (4) additional fiber transmission facilities between its central offices and remote terminals.[21] Ameritech witness Flatt explains that the only elements of the architecture that are new technology are the NGDLC and the OCD. The NGDLCs have the capability to support high bandwidth DSL services that earlier DLCs could not

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20 Ex. 32, p. 2.

21 Project Pronto Waiver Order, ¶ 4.

support. And the OCDs aggregate the DSL data traffic and route the traffic to the appropriate carrier's network, either SBC's or a CLEC's.[22]

Ameritech acknowledges that Project Pronto architecture supports voice services.[23] In addition, Ameritech acknowledges that voice service over Project Pronto "**does comply with the FCC's current unbundling rules and will be available to CLECs on an unbundled basis.**"[24] But even though the architecture for a voice call and a data call are nearly identical, Ameritech contends that the data elements of Project Pronto should not be unbundled. On cross examination Ameritech witness Flatt described that the voice and data service are transmitted over the same copper subloops to the Serving Area Interface (SAI) and then to the back plane of the NGDLC located at the Remote Terminal.[25] The voice signal is split from the data signal by an ADLU card placed in the NGDLC and then travels over a fiber that terminates at the Central Office Terminal (COT) and then is delivered to the CLEC's collocation space.[26] And a number of voice (up to 672 on an OC-3 fiber) signals share the fiber between the NGDLC and the COT.

The data DSL signals that Ameritech asks the Commission to not unbundle follow a similar path to the voice signals that Ameritech concedes must be unbundled. As mentioned above the data signals share the copper subloops with the voice signals from the customer premise to the NGDLC. In the NGDLC,

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22 Tr. 1091 (Flatt Direct).
23 Tr. 1092 (Flatt Direct).
24 Tr. 122 (Chapman Surrebuttal) (emphasis added); See also Tr. 182 (Chapman Cross).
25 Tr. 1194-1195 (Flatt Cross). See Ex. 28.
26 Tr. 1193 (Flatt Cross).

the data signal is split from the voice signal by the ADLU card, goes to the ABCU card which packetizes and multiplexes the data, puts it in cell format and sends it over the OC3c fiber.[27] Similar to the voice signals, a number of customers' data signals are placed on the same fiber and transported to the central office.[28] The data signals terminate at the OCD at the central office and then is delivered to the CLEC's collocation space. This is the same collocation space to which the CLEC voice circuits are terminated. In sum, the voice and data signals traverse virtually the same network equipment on their way to the identical CLEC collocation space. But incredibly, Ameritech will unbundle the voice signal and not the data signal.

B. It Is Technically Feasible To Provide The UNEs requested by Sprint

Ameritech claims that unbundling of Project Pronto is unavailable due to technical and economic feasibility reasons. Ameritech's technical feasibility and cost concerns about unbundling the Project Pronto architecture are misplaced. Ameritech argues that the line card capacity of the NGDLCs and the bandwidth from the NGDLC to the OCD will be exhausted prematurely.[29] Ameritech also claims that CLECs, if permitted to collocate plug in cards at the NGDLC, will likely use only one of the four ports available, thereby leaving three slots vacant.[30] Moreover, Ameritech declares that maintenance and provisioning costs

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27 Tr. 1195 (Flatt Cross).
28 Tr. 1196 (Flatt Cross).
29 Tr.1151 (Flatt Surrebuttal); Tr. 1208.
30 Tr. 1208-1209 (Flatt Cross).

will rise with CLEC line card collocation.[31] Finally, Ameritech witness Flatt argues that CLECs should not have access to Permanent Virtual Path (PVP) transport from the RT to the OCD because a CLEC order of one PVP would consume one third of the data capacity in a Project Pronto cabinet.[32]

Although the sharing of the Project Pronto network on an unbundled basis raises all of the issues raised by unbundling the traditional voice network (and maybe several more), these issues should not compel the Commission to decline to unbundle Project Pronto. Ameritech's concerns are remedied by appropriate application of the TELRIC methodology to suitably price line cards and transport by acknowledging that CLECs must pay for the capacity that they reserve. The Illinois Commission agreed.

> In terms of Ameritech Illinois' concern about exhaust of the NGDLC where CLEC's place line cards but use less than all the ports, we were faced with a similar issue in the "line-at-time" vs. "shelf-at-a-time" splitter provisioning issue in this docket. We concluded that a CLEC that requests an entire splitter shelf should begin paying all the charges that would be associated with the use of entire shelf. Similarly, a CLEC that places a line card in the ILEC NGDLC, should ordinarily begin paying all charges, as if all parts were being fully utilized. This approach provides CLECs with an economic incentive to order only the capacity they will use and avoids wasting parts.[33]

CLEC witness, Mr. Starkey, testified that the Commission should not take the easy way out and refuse to unbundle Project Pronto because issues are raised with unbundling the architecture.

> I would agree that it would be simpler for SBC/Ameritech if it were not required to unbundle the Project Pronto architecture. I would

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31 Tr. 1161 (Flatt Surrebuttal).
32 Tr. 1169 (Flatt Surrebuttal).
33 Illinois Arbitration Decision, p. 42.

> also agree that many technical difficulties could be avoided by allowing SBC/Ameritech to offer only the Broadband Service Offering instead of unbundling the *Project Pronto* architecture. However, competition would suffer tremendously if the Commission takes this path. *Project Pronto* is a pervasive and far reaching architecture that will dramatically change the Ameritech network. Hence, it is to be expected that technical, economic and regulatory issues will arise regarding the manner by which competitors can/cannot access the network. The important choice this Commission must make, however, is (1) should it simply throw up its hands in the face of these complicating issues and provide Ameritech a "free pass" in re-monopolizing the marketplace (this appears to be SBC's preference), or (2) should it, as it has done over the past five years, address those issues in the spirit of developing a more robust and effectively competitive telecommunications marketplace to the benefit of all Wisconsin citizens.[34]

Like unbundling Ameritech's voice network, unbundling of the NGDLC data network elements may not by easy. But this Commission must promote competition in the advanced services market by giving CLECs access to the features and functionalities of Ameritech's loop network for both voice and data services.

Specifically, with respect to the capacity concerns of Ameritech arising from CLEC collocation of plug-in cards, Mr. Starkey recommends, and Sprint agrees, that CLECs should pay Ameritech rates that recover the costs of all of the remote terminal capacity that they use. In the case of CLEC physical or virtual collocation of plug-in cards that implicate the use of 4 copper pairs, then the CLEC should pay appropriate TELRIC rates for this amount of capacity.[35] It must be also noted that Sprint's own profit and efficiency motives will encourage it to utilize all capacity of the plug-in cards by obtaining as many customers as

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[34] Tr. 3232 (Starkey Surrebuttal).

possible. Similarly, if a CLEC reserves a PVP to ensure that a large user or a large number of users has sufficient data capacity, the CLEC should pay Ameritech the appropriate TELRIC rates for such capacity even if it is using an entire channel bank in the NGDLC.[36] A CLEC will be motivated to reserve bandwidth that it needs. Thus, Ameritech's stranded capacity claims must be discounted. In sum, many, if not all of Ameritech's concerns about the technical and economical problems associated with unbundling Project Pronto, can and should be solved by implementing well-grounded TELRIC rates to the NGDLC network elements.

C. Project Pronto Unbundled Network Elements Should Be Unbundled

Sprint requests that the Commission rule that the Project Pronto network elements must be unbundled. Sprint does not ask Ameritech to unbundle network elements that it is not deploying. But where Ameritech installs Project Pronto network architecture, CLECs should obtain access to that network on an unbundled basis and virtually collocate plug-in cards at the NGDLC that are technically compatible with the NGDLC equipment installed by Ameritech. Sprint witness Idoux testified to the specific elements of Project Pronto that must be unbundled.

> CLECs should have access on an unbundled basis to the entire NGDLC loop on an end to end basis. This can be thought of as a combination of UNEs or as a single UNE. I define the NGDLC Loop as including the following elements:

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35 Tr.. 3234 (Starkey Surrebuttal).

36 Tr. 3238 (Starkey Surrebuttal).

- copper subloops from the remote terminal (RT) to the network interface device (NID) at the customer premise and the Serving Area Interface (SAI);

- copper subloops from the SAI to the NID;

- ADLU or any other technically feasible line card in the NGDLC either owned by Ameritech or the CLEC;

- lit fiber subloops between the RT and the OCD including permanent virtual paths on those subloops whether the paths for voice and data be on a single fiber or separate fibers; and

- a Port on the Optical Concentration Device (OCD) (otherwise known as an ATM switch) in the central office.[37]

Of particular interest the Illinois Commerce Commission held that a similar list of Project Pronto UNEs be unbundled in the Rhythms/Covad and Ameritech Arbitration Decision[38] and in the Illinois Line Sharing Order. CLEC witness Starkey provided a similar list of Project Pronto UNEs that should be unbundled but he provided additional details regarding an option of the CLEC receiving the data traffic at a centralized "edge" switch and provided specific types of PVCs and PVPs used for transport.[39] Sprint adopts the additional detail provided by

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37 Tr. 2721 (Idoux Rebuttal).

38 Illinois Arbitration Decision, p. 36

39 Tr. 3411-3412 (Starkey Rebuttal). "The Commission should also require Ameritech to offer multiple options for the transport of the requesting carrier's data signals over the incumbent's fiber feeder facilities: (1) permanent virtual circuits ("PVCs"); (2)permanent virtual paths ("PVPs"); and (3) time-division-multiplexed ("TDM") circuits. Requesting carriers should have the option of obtaining PVCs and PVPs in any of the possible formats, including ITU-T Quality of Service Classes A,B,C, and D; ATM Forum Quality of Service Classes 1,2,3,and 4; and Service Class Categories Available Bit Rate, Constant bit Rate, Variable Bit Rate – real time, Variable Bit Rate – not real time, and Unspecified Bit Rate." Mr. Starkey modified this request in his surrebuttal testimony to acknowledge that Ameritech only make the Quality of Service classes available that Ameritech's Project Pronto architecture can support and that Ameritech "make all features and functions of the network elements comprising Project Pronto available to CLECs on an unbundled basis." (Tr. 3237; Starkey Surrebuttal).

Mr. Starkey as unbundled network elements that should be provided to the CLECs over the Project Pronto architecture.[40]

III. THIS COMMISSION HAS THE AUTHORITY TO UNBUNDLE PROJECT PRONTO AND TO PRESCRIBE ADDITIONAL UNES

Sprint established above that Ameritech is deploying a NGDLC network to bring advanced services to a much larger market; it is technically and economically feasible to unbundle the Project Pronto network elements; and the particular network elements that should be unbundled. This section describes that the Commission has the authority to accept Sprint's unbundling request.

A. Federal Law Permits the Unbundling of Project Pronto

The FCC currently is considering whether NGDLC elements should be unbundled on a national basis.[41] That the FCC is considering these issues too is not a roadblock for this Commission to order the NGDLC UNEs requested by Sprint and the other CLECs. The Illinois Commission recognized the necessity for determining issues related to making the NGDLC UNEs available even before the FCC rules. With respect to the collocation of line cards the ICC stated that is aware that the FCC is receiving comments on the issue, but "the FCC has acknowledged that time to deployment is vitally important in the advanced services market. Line Sharing Order at ¶ 5. Ameritech-IL is rapidly deploying

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[40] Sprint and Mr. Starkey may differ on the type of collocation of line cards. Sprint advocates virtual collocation of CLEC owned plug-in cards only, while Mr. Starkey advocates physical or virtual collocation.

[41] Line Sharing Reconsideration Order; Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Sixth Further Notice of Proposed Rulemaking in CC Docket No.96-98, ¶¶ 55-64.

Project Pronto and intends to allow its affiliate to use Project Pronto for line shared xDSL. . . . Therefore, the Commission will not put on hold its decision regarding CLEC collocation of line cards, given the urgency of the issue for Illinois competitive providers and end users."[42] The same is true here in Wisconsin. The FCC's consideration of these issues should not stop this Commission from ruling in the same manner that the Illinois Commission has. Indeed Ameritech testified that it has 59 remote terminals and 21 OCDs ready for service as of February 28, 2001.[43] And rapid build-out of Project Pronto continues. Ameritech's 2001 Construction Plan indicates that approximately 200 NGDLC capable Remote Terminals have been installed.[44] Without a ruling by this Commission unbundling Project Pronto, Ameritech's construction will continue and CLECs will not be able to provide advanced services in a manner that can compete with Ameritech's offering.

Moreover, a Wisconsin PSC decision unbundling Project Pronto is well grounded in federal law. Although the FCC is still considering unbundling obligations relating to NGDLC equipment, the FCC conclusively has determined that advanced services must be unbundled on two occasions. First, in 1998, the FCC found in the Advanced Services Memorandum Opinion and Order that incumbent LECs were subject to the obligations imposed by section 251 in connection with the offering of advanced services that employ packet-switching

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42 Illinois Arbitration Decision, p. 37 (citation omitted).
43 Tr. 1086 (Flatt Direct).
44 Ex. 136, pp. 30-36.

or other specific technologies such as digital subscriber line technologies.[45] U.S. West, now Quest, sought review of that Order at the D.C. Circuit Court.

The FCC asked the D.C. Circuit for leave to supplement the record on this issue and was granted permission to do so. The FCC received additional comments from ILECs, including SBC, and CLECs and determined again that "because advanced services are telecommunications services, an incumbent LEC (as defined in section 251(h)) must provide nondiscriminatory access to network elements used to provide xDSL-based advanced services consistent with the requirements of section 251(c)(3)."[46] The FCC recognized that the unbundling obligations of section 251(c)(3) are limited by the necessary and impair tests in section 251(d)(2) of the statute.[47]

U S WEST sought review of the FCC's Remand Order again at the D.C. Circuit. The Court ruled on April 20, 2001 that "we find no error in the Commission's conclusion that it can apply the § 251(c) (unbundling and resale) duties to a firm that met the § 251(h) criteria on February 8, 1996 (definition of ILEC) *and* is still providing 'exchange access' or 'telephone exchange service.'"[48] This is conclusive. Unbundling obligations for ILECs apply to all telecommunications services, including advanced services. Thus, this Commission undoubtedly has the authority to rule that the NGDLC elements

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45 Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 24012 (1998), ¶ 11.

46 Remand Order, ¶ 10.

47 Remand Order, ¶ 14.

48 WorldCom, Inc. v. FCC, at *12.

should be unbundled applying the appropriate standards from TA 96 and the FCC rules.

The FCC in the UNE Remand Order and the conforming rule also permit states to order unbundling of network elements using the framework set forth in Section 251 and the FCC rules. The FCC stated:

> We believe that section 252(d)(3) grants state commissions the authority to impose additional obligations upon incumbent LECs beyond those imposed by the national list, as long as they meet the requirements of section 251 and the national policy framework instituted in this Order.[49]

The FCC rules do not prevent this Commission from unbundling additional network elements. In fact, the FCC expressly grants state commissions this authority.

And finally, the FCC found in the Project Pronto Waiver Order that its findings about the ownership of the line cards and the optical concentration devices are narrowly confined to the ownership of those pieces of equipment in light of the Merger Order and are not a finding on SBC/Ameritech's unbundling obligations. Specifically, the FCC stated:

> We stress again that this Order is confined only to the *Merger Conditions*, and so does not constitute any finding or determination with respect to SBC's compliance with section 251 or any other provision of the Act, or SBC's section 251 obligations regarding its Broadband Offering.[50]

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[49] Third Report and Order, *In the Matter of the Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, FCC 99-238 (Released November 5, 1999). ("UNE Remand Order"), ¶ 154; See, 47 CFR § 51.317(d)).

[50] In the Matter of the Ameritech and SBC Communications for Consent to Transfer Control of Corporations Holding Commission Licenses, Second Memorandum Opinion and Order, CC Docket 98-141, FCC 00-336, (Released September 8, 2000) ("Project Pronto Waiver Order"), ¶ 9.

Thus, the FCC's order permitting the SBC/Ameritech ILECs rather than their advanced services affiliates to own the line cards and OCDs is not a determination that those pieces of equipment or the entire Broadband Offering do not have to be unbundled.

Then several days before Ameritech's rebuttal testimony was pre-filed in this case, the FCC conclusively determined that line sharing is available even where fiber is deployed in the loop.

> 10. We clarify that the requirement to provide line sharing applies to the entire loop, even where the incumbent has deployed fiber in the loop (*e.g.*, where the loop is served by a remote terminal). Our use of the word "copper" in section 51.319(h)(1) was not intended to limit an incumbent LEC's obligation to provide competitive LECs with access to the fiber portion of a DLC loop for the provision of line-shared xDSL services. As noted above, incumbent LECs are required to unbundle the high frequency portion of *the local loop* even where the incumbent LEC's voice customer is served by DLC facilities. The local loop is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end user customer premises, including inside wire owned by the incumbent LEC. By using the word "transmission facility" rather than "copper" or "fiber," we specifically intended to ensure that this definition was technology-neutral. The "high frequency portion of the loop" is defined as the frequency range above the voiceband on a copper loop facility that is being used to carry analog circuit-switched voiceband transmissions. Thus, although the high frequency portion of the loop network element is limited by technology, *i.e.*, is only available on a copper loop facility, *access to* that network element is not limited to the copper loop facility itself. When we concluded in the *Line Sharing Order* that incumbents must provide unbundled access to the high frequency portion of the loop at the remote terminal as well as the central office, we did not intend to limit competitive LECs' access to fiber feeder subloops for line sharing.[51]

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[51] Line Sharing Reconsideration Order, ¶ 10.

In sum, the FCC requires ILECs to give CLECs the full features and functionalities for line sharing even where a portion of the loop is fiber like in the NGDLC architecture that Ameritech is deploying; state commissions can order unbundling beyond the FCC's national list of UNEs; and the Project Pronto Order made no determination about whether the OCDs and plug-in cards must be unbundled. Moreover, the FCC has ruled and the D.C. Circuit has affirmed that ILECs have an affirmative obligation to unbundle network elements used to provide advanced services. This federal authority gives this Commission the tools to fashion specific unbundling obligations for Project Pronto in Wisconsin.

B. Wisconsin Law Permits the Unbundling of Project Pronto

Moreover, Wisconsin law clearly allows the Commission to order Ameritech to unbundle the Project Pronto network elements that have not been unbundled because the additional unbundling is in the public interest and consistent with the policy goals of the Wisconsin statutes.

> The public service commission may require additional unbundling of intrastate telecommunications services based on a determination, following notice and opportunity for hearing, that additional unbundling is required in the public interest and is consistent with the factors under s. 196.03(6).[52]

Included in the factors from 196.03(6) are the (a) promotion and preservation of competition; (b) promotion of consumer choice; (c) impact on the quality of life for the public; and (f) promotion of efficiency and productivity.[53] The public interest test from 196.219 and the factors from 196.03 are satisfied by unbundling the piece parts of Project Pronto. No other company can offer the

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[52] W.S.A. 196.219(f).

ubiquitous network that Ameritech has. Ameritech has participated vigorously in this case, so it is on notice that Project Pronto may be unbundled. Finally, unbundling Project Pronto is clearly in the public interest and promotes competition in the advanced service market. As described in more detail below, without unbundling Project Pronto, (a) CLECs will be tied to offering the Ameritech broadband service rather than having the ability to design and implement their own innovative product offerings;[54] (b) CLECs will be impaired by using existing home run copper loops because the whole point of Project Pronto is to extend the copper network to the neighborhoods to remove the distance limitations of DSL service;[55] and (c) CLECs cannot economically and efficiently collocate DSLAMs at the hundreds of remote terminal sites to be deployed by Ameritech Wisconsin.[56] The public interest will be served by requiring Ameritech to unbundle its Project Pronto elements. The monopoly provider's network will be utilized in a manner that permits multiple carriers to provide service and to compensate Ameritech for such use at cost based rates. Consequently, under 196.219(f), this Commission has the authority to order Ameritech to unbundle the Project Pronto architecture.

Thus, this Commission using the standards set forth in FCC rule 51.317 has the authority under Section 196.219(f) and 196.03 to order the unbundling of the Project Pronto architecture to make it available to CLECs as a single combined UNE, or as individual UNEs, or both.

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53 W.S.A. 196.03(6).
54 Tr. 2757-2760 (Idoux Surrebuttal).
55 Tr. 2752-2753 (Idoux Surrebuttal); Tr. 147 (Chapman Cross).

IV. APPLICATION OF THE IMPAIR STANDARD COMPELS THE CONCLUSION THAT PROJECT PRONTO MUST BE UNBUNDLED

A. The Impair Standard From Section 251(d) Applies Here

The Telecommunications Act of 1996 and the UNE Remand Order set forth the legal standards for unbundling network elements. Section 251(d) of TA 96 requires the FCC in determining what elements to unbundle to consider at a minimum whether access to proprietary network elements is necessary and the failure to provide access to non-proprietary elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer.[57] The UNE Remand Order and accompanying regulations precisely set forth the circumstances that prescribes the necessary/ impair standard for determining when a portion of the ILEC network must be unbundled.

Because no evidence as been presented that the Project Pronto elements are proprietary, the Commission should move to the impair standard under Section 252(d)(2)(B). The FCC defines "impaired" in Rule 51.317(b)(1) as "lack of access to that element materially diminishes a requesting carrier's ability to provide the services it seeks to offer."

The FCC then defines "materially diminishes" in Rule 51.317(b)(2). The Commission will consider whether alternatives in the market are available as a practical, economic, and operational matter and will rely upon factors such as

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56 Tr. 2755-2756 (Idoux Surrebuttal).

57 TA 96, § 251(d)(2)(A) and (B).

cost, timeliness, quality, ubiquity, and impact on operations in making that determination.[58]

Finally, in considering whether proprietary elements under the necessary standard or non-proprietary elements under the impair standard should be unbundled, the FCC may also consider the additional factors set forth in 51.317(c). Those factors include whether the unbundling of network elements will promote the introduction of competition; promotion of facilities based competition, investment and innovation; promotion of reduced regulation; whether the unbundling of the network elements promotes certainty that the element will be made available; and whether unbundling of the element is administratively practical.[59]

In sum, this Commission can order the Pronto network elements to be unbundled and made available to CLECs on a non-discriminatory basis if the CLECs would be "impaired" in offering the advanced services without unbundled access. In other words, Pronto can be unbundled if the lack of access to the Pronto network elements would materially diminish the CLECs' ability to offer the services that they seek to offer.

B. CLECs' Ability to Offer Advanced Services is Materially Impaired Without Unbundled Access to Project Pronto

CLECs will be impaired without access to the Project Pronto architecture on an unbundled basis. As identified above, the entire NGDLC loop from the customer premises to the central office should be available to CLECs on an

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[58] FCC Rule 51.317(b)(2).

unbundled basis. Also, Ameritech should make the various components of the NGDLC loop available to CLECs on an unbundled basis. CLECs should have the unbundled access to the precise components identified by Sprint witness Idoux and CLEC witness Starkey. Those pieces include access to the subloops from the customer premises to the Remote Terminal (RT); the Ameritech owned plug-in line card or the ability of the CLEC to virtually collocate a plug-in card at the NGDLC; lit fiber subloops from the RT to the central office including PVCs and PVPs; a port on the Optical Concentration Device; and transport to the CLEC's network.

1. The Project Pronto Network Elements Bear An Unmistakable Resemblance To Other UNEs

Before getting to the impair test, common sense and the unmistakable UNE nature of the Project Pronto network elements dictate the unbundling of the Pronto network. The loop plant of the incumbent LECs remains the quintessential bottleneck facility. Competing providers must have full access to the features and capabilities of the loop plant (whether its configuration is all copper or a mix of copper and fiber) if CLECs are able to have any opportunity to offer meaningful competition to ILECs for the full range of integrated voice and broadband services that consumers will demand.

In addition to the basic premise that Ameritech is required to unbundle its local loop, the UNE nature of the Project Pronto architecture is self-evident. First, like provisioning a specific customer with a defined set of UNEs, the Broadband Service Offering can provide its Broadband Offering to specific CLEC

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[59] 47 CFR 51.317(b)(3).

customers.[60] Furthermore, the Broadband Offering is described by the FCC in the Project Pronto Waiver Order (which quotes extensively from ex parte submissions by SBC describing its offering) as a "combination of network elements" and carriers order the Project Pronto subloop elements "as a single combination by submitting a Local Service Request (LSR), which is the process already used to order unbundled network elements."[61] Ms. Chapman confirmed that CLECs submit the same LSR form to order the Broadband Service in the same way that CLECs order other unbundled network elements.[62] Finally, Ameritech has committed to price the Broadband Service at TELRIC-based UNE rates and "those terms can be arbitrated in a 251 and 252 proceeding."[63] To summarize, Ameritech's position is that its Broadband Service Offering is not an unbundled network element even though 1) it can provision a specific customer with the Broadband Service just like any other UNE based offering; 2) the service is described by the FCC as network elements; 3) the service is ordered by CLECs in the same manner that UNEs are ordered; and 4) the service will be offered at TELRIC prices by Ameritech like UNEs. As the old saying goes, if it looks like a duck, walks like a duck, and quacks like a duck; it must be a duck. Here the Broadband Service offering looks like UNEs, is ordered like UNEs, and is priced like UNEs. The elements of the Broadband Service must be UNEs.

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60 Tr. 155 (Chapman Cross):
"Q. Now SBC-Ameritech can provision a specific customer for Sprint using the architecture that it has deployed; is that right?
A: Yes."

61 Project Pronto Waiver Order, ¶ 31.

62 Tr. 146 (Chapman Cross).

63 Tr. 145 (Chapman Cross).

2. Ameritech's Alternatives To Unbundling Still Leave CLECs Impaired In Offering Advanced Services

Drilling deeper, unbundled access to the entire broadband loop and the loop subelements meet the necessary/impair test stated in the UNE Remand Order. First, Ameritech has not claimed in testimony that the Project Pronto architecture is proprietary as that term is used in Section 251(d)(2)(A) and FCC Rule 51.317.[64] Consequently, the CLECs need not demonstrate here that access to the Project Pronto network is "necessary."

CLECs should be given unbundled access to the Project Pronto network elements because without these elements CLECs are impaired in providing advanced services. The FCC accepted the Illinois Commission's definition of impair by stating:

> We therefore agree with the Illinois Commerce Commission that where a competing LEC's 'ability to offer a telecommunications service in a competitive manner is materially diminished in value without access to that element,' the competitor's ability to provide its desired service is impaired.[65]

To avoid having to unbundle Project Pronto by claiming that CLECs are not impaired without access to it, Ameritech offers three alternatives to CLECs: (a) the Broadband Service Offering; (b) collocation at remote terminals and accessing subloops; and (c) use of the existing copper loop plant. None of these alternatives alleviates the material diminishment to the CLECs' ability to compete with Ameritech or its affiliate for advanced services. The shortcomings of each of these alternatives are discussed below in detail along with the factors from FCC

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64 Tr. 2760 (Idoux Surrebuttal).
65 UNE Remand Order, ¶ 51.

Rule 51.317(b)(2) of Cost, Timeliness, Quality, Ubiquity, and Impact on Network Operation.[66]

a. The Broadband Service Offering

Ameritech claims that CLECs will not be impaired by not unbundling Project Pronto because it makes available the Broadband Service Offering.[67] This alternative is impractical as an economic and operational matter for CLECs.[68] There is a number of reasons why the Broadband Service Offering is insufficient to overcome the impairment standard. First, and foremost, the availability of resale of an Ameritech retail service is no substitute for unbundling the network elements that comprise the service. Ameritech claims that the Broadband Service Offering is a voluntary stand-alone Service Agreement and will not be offered in the context of an Interconnection Agreement negotiated under Sections 251/252(c)(2). [69] The Project Pronto Order characterizes the Broadband Offering as giving CLECs the ability to resell SBC's ADSL service.[70] The UNE Remand Order expressly states that the availability of retail or resold services carries little weight in an analysis of whether a CLEC is impaired.

> We assign little weight in our "impair" analysis to the ability of a requesting carrier to use the incumbent LECs' resold or retail tariffed services as alternatives to unbundled network elements. In the *Local Competition First Report and Order*, the Commission expressly rejected the incumbent LECs' argument that requesting carriers are not impaired in their ability to provide service if they can

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66 Where appropriate, reference will also be made to the factors from 51.317(b)(2) that the FCC may consider in unbundling network elements. These terms are capitalized in the remainder of the text for easy reference.

67 Tr. 106 (Chapman Direct).

68 47 CFR § 51.317(b)(2).

69 Tr. 143 (Chapman Cross).

70 Project Pronto Waiver Order, ¶ 23.

> provide their proposed service by purchasing the service at wholesale rates from the incumbent LEC. As the Commission concluded in that Order, allowing incumbent LECs to deny access to unbundled elements solely, or primarily, on the grounds that an element is equivalent to a service available at resale would lead to impractical results; incumbent LECs could completely avoid section 251(c)(3)'s unbundling obligations by offering unbundled elements to end users as retail services.[71]

Ameritech is attempting to pull the same trick here that the FCC already has rejected. Just because Ameritech calls the network elements that make up the Broadband Service a "service" does not relieve Ameritech of its unbundling obligations under TA96. Under settled FCC precedent, the availability of the retail Broadband Service on a wholesale basis is utterly inconsequential in determining whether CLECs are impaired for purposes of Rule 51.317.

Notwithstanding that fatal flaw, the Broadband Service Offering flunks the impairment test for other reasons. First, the terms of Ameritech's Broadband Service Agreement expressly give Ameritech the ability to unilaterally withdraw the offering for virtually any reason.[72] Ameritech testifies that the Broadband Service is a voluntary offering and not subject to Commission authority for any of its terms and conditions.[73] Any CLEC that signs the Agreement would run the risk that Ameritech would modify substantially or eliminate the service. Obviously, no CLEC would rationally begin serving customers using an agreement of this nature. Certainty in the marketplace is an additional factor that

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71 UNE Remand Order, ¶ 67.

72 Tr. 2759 (Idoux Surrebuttal).

73 Tr. 145 (Chapman Cross):
"Q: So the rates can be (arbitrated) but SBC-Ameritech's position is that the terms and conditions in the broadband service offering should not be litigated in a 251/252 arbitration; is that right? A: (Chapman) That's correct."

the FCC considers in its unbundling analysis.[74] Ameritech's unilateral ability to withdraw or modify the Broadband Offering gives CLECs no certainty that they can count on the Broadband Offering to provide service to customers for any period of time. "CLECs cannot base business plans on such uncertainty."[75]

Because the Broadband Service Offering is nothing more than a resale of Ameritech's service, there will be little chance for a CLEC to differentiate its offering from the retail Internet product offered by the Ameritech affiliate. Sprint witness Idoux explained how the Broadband Offering impairs a CLEC's ability to offer innovative, competitive products.

> Ameritech's Broadband Service offerings gives CLECs asymmetric digital subscriber line service only according to Ameritech defined specifications. In other words, Ameritech's Broadband Service offerings are nothing more than a resale offering of ADSL service. In fact, the FCC even acknowledges that SBC's Broadband Service offerings "enables competing carriers to effectively resell SBC's ADSL service".[76]
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> Reselling SBC's ADSL service may be an appropriate entry strategy for certain CLECs but not for Sprint. As previously noted, Sprint needs the flexibility to design a service offering that differentiates itself from Ameritech's offering and the ability to rapidly meet changing market conditions. To the extent that Sprint can only obtain high-speed data from the Broadband Service Offering, Sprint is constrained to the specifics of the Ameritech offer and is not able to differentiate itself in the marketplace.[77]

With no choice other than to offer the Broadband Offering that Ameritech's affiliate, AADS, is offering, Sprint and other CLECs will not be able to bring dynamic competitive choices to the marketplace and have the ability to overcome

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74 UNE Remand Order, ¶ 114.
75 Tr. 2760 (Idoux Surrebuttal).
76 Project Pronto Order, paragraph 23.

AADS' first to market competitive advantage of providing advanced services over the Pronto network. The lack of ability to design offerings different than the Broadband Service Offering implicates the Quality and Promotion of Competition, Investment and Innovation factors from the impair analysis in 51.317(b)(2) and (3). CLECs are tied to the bit rates and classes of service offered by Ameritech and cannot build innovative services.[78]

Ameritech makes too much of the commitments in the Project Pronto Waiver Order to work collaboratively with CLECs to establish different quality of service classes including constant bit rates and virtual paths.[79] First, AADS already has a first to market advantage. Second, the collaborative processes that will flesh out the details on these services cannot force Ameritech to do anything that it does not want to do. If Ameritech does not want to let a CLEC obtain a specific variety of DSL, for example, and the Project Pronto network is not unbundled, a CLEC will have no recourse before this Commission or any other regulatory body to force Ameritech to comply with the request. Finally, Ameritech witness Flatt qualified Ameritech's commitment to providing additional line cards by stating that it will not make line cards available that harm the capacity of the platform or the service quality of the end users that are using the shared facility.[80] While Sprint is not interested in harming Ameritech's network - quite the contrary it has an interest in ensuring that the network is usable for UNEs - Ameritech's lack of commitments in letting CLECs use technically

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77 Tr. 2757 (Idoux Surrebuttal).
78 UNE Remand Order, ¶¶ 96, 110.
79 Project Pronto Order, ¶ 45.

feasible line cards severely curtails Sprint's ability to develop products that can compete with Ameritech's offering. Based upon the impair analysis factors of Certainty, Quality, and Promotion of Innovative Services, failure to unbundle the Broadband Service Offering impairs CLECs' ability to offer differentiated, competitive services.

b. Sub-loop unbundling

Ameritech then claims that CLECs are not impaired if it does not unbundle Project Pronto as a UNE because CLECs can collocate DSLAMS at remote terminals (RT) and provide advanced services using subloops.[81] The UNE Remand factors of Timeliness, Cost, Ubiquity, and Rapid Introduction of Competition are all implicated when considering the remote collocation of DSLAMs option.[82] In most instances the collocation of a DSLAM at the RT is problematic, inefficient, and uneconomic for CLECs wishing to provide advanced services. The FCC and the ICC have found that CLEC collocation of DSLAMs are problematic. "All indications are that fiber deployment by incumbent LECs is increasing, and that collocation by competitive LECs at remote terminals is likely to be costly, time consuming, and often unavailable."[83] The cross examination of Ameritech witness Flatt also revealed the difficulties of collocating DSLAMs in RTs.[84] Problems of accessing customers in that manner include finding collocation space in the RT or adjacent to the RT, completing an engineered

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80 Tr. 1164 (Flatt Surrebuttal).
81 Tr. 1105 (Flatt Direct).
82 UNE Remand Order, ¶¶ 72, 89, 97,107.

control splice at special construction charge rates and intervals to access a cross connect to the CLEC's DSLAM, and finding and leasing dark fiber back to the Central Office. Besides the uncertainty and cost issues with not knowing time frames and rates for constructing adjacent collocations and engineered control splices, Ameritech could not guarantee that there will be room for a particular CLEC or group of CLECs to collocate a DSLAM. Also, Ameritech does not guarantee that dark fiber is available at each RT for transport back to the central office.[85]

Sprint, in fact, is in the process of collocating a DSLAM at a remote terminal site in Kansas with Ameritech's affiliate, SWBT. It has taken Sprint months and thousands of dollars to just collocate at a single Remote Terminal. Mr. Idoux testified about the difficulties of collocating a DSLAM at a single RT site.

> ... there might be some target time frames of 90 to 180 days for collocation arrangements, Sprint's typical arrangement in other parts of the country range anywhere from five months to two years.
>
> So the time to market is nowhere comparable to what Ameritech can offer its own users in that ability to get a substantial head start in getting customers and put any CLEC at a disadvantage.
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> Second of all, as my testimony say although I don't have an exact number for Wisconsin, I am assuming that there are hundreds of DLCs for Sprint which estimates the cost of collocating at the terminal to be about $110,000 a piece.

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[83] Line Sharing Reconsideration Order, ¶ 13. See Illinois Arbitration Decision, p. 32 ("Further, the high cost of collocation and crowded conditions in RTs often make collocation unavailable.").

[84] Tr. 1199 – 1204 (Flatt Cross).

[85] Tr. 165 (Chapman Cross).

It would be cost prohibitive for Sprint to collocate at all the places that Ameritech is able to offer DLCs.[86]

The Ameritech 2001 Construction Report, Ex. 136, states that Ameritech has placed 200 NGDLCs at Remote Terminals in Wisconsin. Using Mr. Idoux's estimate off $110,000 per RT collocation, it would cost Sprint $22,000,000 to just collocate at each of the currently installed RTs. The FCC places extra emphasis on fixed costs for collocation in its impairment analysis.[87] The FCC stated, "If the competitor must collocate its own switches in multiple central offices throughout the MSA in order to serve those customers, the costs associated with collocation may impair the competitor's ability to provide the services it seeks to offer, even if the cost of purchasing the individual equipment hardware is not excessive."[88] Collocation of DSLAMS at multiple locations significantly raises the costs of Sprint and impairs its ability to compete with Ameritech. Because of the excessive Cost, time to market, uncertainty in knowing if collocation space and dark fiber facilities are available, and the inability of CLECs to replicate Ameritech's Ubiquitous network for advanced services by collocating DSLAMs at or adjacent to the RT, this option does not alleviate the material impairment that CLECs will incur if Project Pronto is not unbundled.

c. Existing Copper Loop Network

Ameritech's final rationale for stating that CLECs do not need access to Pronto as an UNE is that since Project Pronto is an overlay network CLECs are

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86 Tr. 2827-2828 (Idoux Redirect).
87 UNE Remand Order, ¶¶ 78-82.
88 UNE Remand Order, ¶ 80.

free to use the existing copper loop plant to provide xDSL services. This option is equally unavailing for CLECs. The UNE Remand factors most implicated by this option are Ubiquity, Cost, and Quality.[89]

Ameritech freely admits that one of the reasons why it is building Project Pronto is to make advanced services available to a much greater number of potential customers. The FCC quotes a SBC press release stating that the Project Pronto build-out permits SBC to make DSL technology available to over 20 million customers in its 13 state region that cannot receive DSL service today because of technical and operational issues.[90] The logical corollary to this is that CLECs cannot use the existing copper loop plant to serve 20 million customers in the 13 state region. Consequently, the copper loop plant that can provide advanced services is not ubiquitous as Ameritech Wisconsin's Project Pronto will be. The FCC stated: "It is reasonable to expect that, in many cases, competitors would want to provide ubiquitous service in order to achieve similar economies of scale that will allow them to spread the costs of construction, equipment, and marketing across as many customers as possible. ... Denying access to the incumbent's unbundled network elements, when use of alternative sources would materially diminish the competitor's ability to serve their intended geographic area, would be inconsistent with the goal of the 1996 Act to bring competition to the greatest number of customers."[91] Without unbundled access to Project

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89 47 CFR 51.317(b)(2).
90 Project Pronto Waiver Order, ¶ 4.
91 UNE Remand, ¶ 98.

Pronto, Sprint and other CLECs will not be able to offer xDSL services to the same Ubiquitous market that Ameritech can.

Next, CLECs are likely to be competitively disadvantaged from Cost and Quality perspectives if they use copper to line share while the Ameritech affiliate, AADS, is using Project Pronto. Project Pronto loops are engineered to be 12,000 feet or less. [92] This gives Ameritech or its affiliate AADS two advantages. First, it will not have to pay Ameritech for conditioning charges to remove interferers like load coils because loops under 12,000 feet are not subject to conditioning charges. Conversely, CLECs that obtain loops at lengths greater than 12,000 feet must pay Ameritech the exorbitant amounts proposed for the removal of load coils, bridged taps and the like. Even if proposed conditioning charges are reduced as suggested by the CLECs, Ameritech or its affiliate will have no charge for conditioning because their loops will be less than 12,000 feet.

Second, loops less than 12,000 feet like the copper portion of the Project Pronto loops are capable of transmitting data much faster than legacy copper loops that are lengths greater than 12,000 feet.[93] The quality of the CLECs' advanced services will suffer in comparison to the advanced services provided by Ameritech or its affiliate.

Finally, given its vast investment in Project Pronto, Ameritech will have an incentive to retire its out-moded copper loop plant. To assuage the FCC, SBC made commitments to not retire copper in the next year, and restrictions for retiring it in the next 3 years. But Ameritech has no restrictions from retiring

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92 Tr. 148 (Chapman Cross).

copper loop plant after 2003.[94] It does not make sense for Ameritech to service and maintain 2 loop networks simultaneously. Ameritech will have to keep records on two networks, have technicians trained on, and have to maintain both networks. Its hard to imagine SBC/Ameritech maintaining 2 loop networks especially since it is telling its investors that "Project Pronto is projected to deliver cost reductions through reduced maintenance and lowered capital requirements."[95] Considering the impair factors from 51.317(b), the use of the existing copper loop plant and collocating DSLAMs at the central office impairs CLEC ability to offer advanced services because 1) loop length limitation make the CLEC potential market much smaller than Ameritech's (less Ubiquitous than Ameritech's offering); 2) loop conditioning charges incurred by the CLEC that Ameritech or its affiliate will not incur (more Costly than Ameritech's offering); 3) speed limitations for all copper loops of over 12,000 in comparison to Project Pronto loops (lower Quality than Ameritech's offering); and 4) the continued availability of the copper loop plant for use by CLECs is in question due to the inefficiencies of maintaining two networks (less Ubiquitous than Ameritech's offering).[96]

V. THE PACKET SWITCHING ELEMENTS OF PROJECT PRONTO SHOULD BE UNBUNDLED

Ameritech also argues that the NGDLC Project Pronto architecture contains packet switching and the FCC conclusively has determined that packet

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93 Tr. 2753-2754 (Idoux Surrebuttal).
94 Project Pronto Waiver Order, ¶ 39.
95 Tr. 2754; Ex. 66, SBC Investor Briefing, December 19, 2000, Attachment A, p. 6.

switching is not available as a UNE. Ameritech is wrong for two reasons. First, the FCC permits packet switching to be unbundled as a UNE if four criteria are satisfied; and those criteria are satisfied here.[97] Second, even if it is found that one or more of the FCC packet switching criteria are not met at a particular location or in general, this Commission has the authority - from the FCC and in state law - to unbundle network elements beyond the FCC's current list of UNEs if the impair test from FCC Rule 51.317(b) is satisfied.[98] Sprint clearly has demonstrated above that the impair test is met due to the issues related to the three alternatives offered by Ameritech.[99] The Project Pronto elements must be unbundled.

A. The FCC's Four Criteria For Unbundling Packet Switching Are Satisfied

The FCC has defined packet switching in the following manner:

> The basic packet switching function of routing or forwarding packets, frames, cells or other data units based on address or other routing information contained in the packets, frames, cells or other data units, and the functions that are performed by Digital Subscriber Line Access Multiplexers, including but not limited to:
>
> (i) The ability to terminate copper customer loops (which includes both a low band voice channel and a high-band data channel, or solely a data channel);
>
> (ii) The ability to forward the voice channels, if present, to a circuit switch or multiple circuit switches;
>
> (iii) The ability to extract data units from the data channels on the loops, and

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96 Tr. 2755 (Idoux Surrebuttal); 47 CFR §51.317(b)(2).
97 See 47 CFR § 51.319(c)(4).
98 47 CFR § 51.317(b)(4): W.S.A. §§ 196.219(f) and 196.03(6).
99 See, Section III above.

(iv) The ability to combine data units from multiple loops onto one or more trunks connecting to a packet switch or packet switches.[100]

Sprint does not dispute that the NGDLC architecture being deployed by Ameritech contains packet switching. As Ameritech witness Chapman stated, the ADLU cards plugged into the NGDLC act as DSLAMs.[101] And data packets or cells are then routed to the OCD in the central office where the data is delivered to the CLEC or routed by Ameritech for its own use.

Although the NGDLC network being deployed by Ameritech contains packet switching, the FCC requires ILECs to unbundle packet switching where the following conditions are satisfied:

(i) The incumbent LEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (e.g., end office to remote terminal, pedestal or environmentally controlled vault);

(ii) There are no spare copper loops capable of supporting the xDSL services the requesting carrier seeks to offer;

(iii) The incumbent LEC has not permitted a requesting carrier to deploy a Digital Subscriber Line Access Multiplexer at the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these subloop interconnection points as defined by § 51.319(b); and

(iv) The incumbent LEC has deployed packet switching capability for its own use.[102]

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100 47 CFR §51.319(c)(3)(A).
101 Tr. 149 (Chapman Cross).
102 47 CFR §51.319(c)(3)(B).

The above four criteria are satisfied here in Wisconsin and Ameritech must unbundle packet switching. The Illinois Commission analyzed the four packet switching criteria and found that "the evidence demonstrates that all four criteria are satisfied and it is permissible to make the OCD (ATM switch) available as a UNE."[103] An analysis of each of the criteria and the evidence here compels that this Commission follow the Illinois Commission and rule that the packet switching components do not prevent CLECs from having unbundled access to Project Pronto.

(1) Deployment of digital loop carrier systems

There is no question that Ameritech is deploying Next Generation Digital Loop Carriers throughout its Wisconsin network. Based upon SBC's filings the FCC characterized Project Pronto as relying in "large part upon the increased use of Digital Loop Carrier (DLC) systems to reduce overall costs."[104] Ameritech Wisconsin's 2001 Construction Plan also confirms that Project Pronto will deploy NGDLCs to reduce loop length and network condition limitations to provide broadband capability to more than 87% of customers in Ameritech Wisconsin service territory.[105] Although the first criteria only requires the presence of DLCs and not the replacement of copper because of the disjunctive use of "or" in the FCC rule, Ameritech freely admits that fiber will replace a substantial portion of

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103 Illinois Arbitration Order, p. 32.
104 Project Pronto Waiver Order, ¶ 4.
105 Ex. 136, p. 21.

its copper feeder loop plant.[106] The FCC's first criteria of the packet switching rule has been satisfied.

(2) No spare copper loops capable of supporting the xDSL services that the CLEC seeks to offer.

The second FCC condition states that there is no spare copper loops capable of supporting the xDSL services the requesting carrier seeks to offer. Sprint witness Idoux testified that "typically the copper loops that are available from the central office to the customer premises are too long to support any competitive xDSL services."[107] Ameritech has acknowledged that the purpose of Project Pronto is to overcome loop length issues that result from the traditional copper loop network.[108] In fact, with Project Pronto, loop lengths are shortened to 12,000 feet or less which allows Ameritech to provide broadband xDSL services to a much larger market.[109] The logical corollary to this is that the existing copper loop network is not available to provide xDSL services because of excessive loop lengths and other network conditions. Mr. Starkey confirmed this and stated:

> For example, Ms. Flatt argues that the FCC's second condition for requiring unbundled access to packet switching, that "no spare copper loops" are available will not be met because Project Pronto is an overlay network. Hence, Ms. Flatt suggests, the previously existing copper will always be available and additional copper loops may be made available by the deployment of Project Pronto. Ms. Flatt's argument entirely ignores the portion of the FCC requirement that states that the spare copper must be "capable of supporting the xDSL services the requesting carrier seeks to offer." As I noted above, Ameritech's deployment of Project Pronto is primarily being

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106 Tr. 1185 (Flatt Cross).
107 Tr. 2763 (Idoux Surrebuttal).
108 Ex. 136, p. 21.
109 Tr. 148 (Chapman Cross).

> placed where existing copper loops do not support xDSL. Hence, the remaining copper that Ameritech's overlay approach will leave in place will generally not meet the FCC's second criterion for exempting packet switching from an unbundling requirement.[110]

Project Pronto is being deployed to solve copper loop length and other network problems. While an individual copper loop may be available at a specific customer location, the Commission should not analyze copper loop availability customer by customer. Such an analysis would ignore the very reasons given by Ameritech for deploying Project Pronto and would be contrary to the Illinois Commission's broad view. There the ICC found that "copper loops will not always be available, particularly spare copper capable of supporting xDSL services."[111] The same is true in Wisconsin. Moreover, analysis of copper loop availability on a loop by loop basis leads to absurd results. The FCC could not have wanted CLECs running to state commissions to prove that packet switching should be available customer by customer, loop by loop. CLECs would be spending more time litigating than serving customers and scarce state commission resources would be exhausted. The FCC's second requirement of the packet switching rule has been satisfied.

(3) The ILEC has not permitted the CLEC to collocate a DSLAM nor has the CLEC obtained a virtual collocation arrangement at a subloop access point

The third FCC condition is when the ILEC has not permitted the requesting carrier to deploy a DSLAM at the remote terminal or other interconnection point or the requesting carrier has not obtained a virtual

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110 Tr. 3106-3107 (Starkey Rebuttal).

collocation arrangement at subloop interconnection points. Ameritech unequivocally states that it will not allow CLECs like Sprint the ability to physically or virtually collocate line cards, which serves as the functional equivalent of a DSLAM.[112] Ameritech witness Ms. Chapman confirmed that the plug-in card with the NGDLC equipment provides the functionality of the DSLAM.[113] Finally, Ameritech witness Ms. Flatt confirmed that it is technically feasible for a CLEC to virtually collocate a line card and serve customers as long as the plug-in card works with the NGDLC equipment.[114] Although it is technically feasible, Ameritech does not permit physical or virtual collocation of plug-in cards (which act as DSLAMs in the NGDLC) or access to subloops at the NGDLC. The Illinois Commission confirmed the CLEC position by stating: "Third, the evidence demonstrates that Ameritech-IL will not voluntarily allow CLECs to collocate line cards with DSLAM capability in the NGDLC equipment at the RT."[115] And even if one does not consider the virtual collocation of line cards, collocation of standard DSLAM equipment is fraught with problems and inefficiencies. Sprint details those problems above.[116] The FCC acknowledged the problems with collocating DSLAM equipment at the RT. "All indications are that fiber deployment by incumbent LECs is increasing, and that collocation by competitive LECs at

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111 Illinois Arbitration Decision, p. 32.
112 Tr. 1139 (Flatt Surrebuttal).
113 Tr. 148 (Chapman Cross) See Project Pronto Waiver Order, ¶ 14 ("As SBC itself notes, the ADLU Card plugged into an NGDLC system provides functionality similar to a DSLAM.")
114 Tr. 1211-1212 (Flatt Cross).
115 Illinois Arbitration Decision, p. 32.
116 See III. B(2)(b).

remote terminals is likely to be costly, time consuming, and often unavailable."[117] The third criterion is satisfied. CLECs cannot collocate plug-in cards at the remote terminal on the same conditions that Ameritech does nor can it obtain subloop access at the NGDLC.[118]

(4) The ILEC has deployed Packet Switching for its own use

The fourth and final FCC condition is that the ILEC deploy packet switching for its own use. In its Investor Briefing dated December 19, 2000, SBC stated the following:

> To create a platform for growth in advanced data and broadband services, SBC continues to deploy Project Pronto, its high-capacity next-generation local network. Launched in October 1999, Project Pronto is creating a robust, data-centric network architecture capable of delivering broadband services and significant operating efficiencies. Today, more than 90 percent of SBC's targeted central offices are DSL-capable.[119]

Clearly, Ameritech is using the NGDLC for its own use. When customers are migrated to the Project Pronto network, and the CLEC is only providing data to the customer, Ameritech will use the packet switching capability encompassed in the DSLAM functionality of the line cards for itself to forward the voice channels to its circuit switch. And as a result of the Court's opinion in *Assoc. of Communications Enterprises v. FCC*, Ameritech's affiliate, AADS, will not be able to use the packet switching for its use alone. Recall that the Court said that

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[117] Line Sharing Reconsideration Order, ¶ 13. See Illinois Arbitration Decision, p. 32 ("Further, the high cost of collocation and crowded conditions in RTs often make collocation unavailable.").

[118] UNE Remand Order, ¶ 313.

[119] Ex. 66.

Ameritech cannot evade its Section 251(c) unbundling obligations by transferring advance service provisioning to its affiliate. Without question now, packet switching will be used for Ameritech's own use. The Illinois Commission found that Project Pronto is being deployed for Ameritech's own use. "There is substantial evidence on the record that SBC, Ameritech-IL's parent is deploying Project Pronto for its own financial benefit, both in terms of cost savings and development of the advanced services market."[120] Similar evidence has been presented here. Condition 4 of the packet switching rule is satisfied.

B. If The Commission Finds That One Or More Of The Packet Switching Unbundling Criteria Are Not Met, It Has The Authority To Order The Unbundling Of The Packet Switching Contained In Project Pronto

If the Commission determines that any of the packet switching criteria from FCC Rule 51.319(c)(5) are not satisfied, it has the authority from federal and state law to order - and it should order - the unbundling of packet switching in the NGDLC Project Pronto architecture. As set forth above in Section III.A, the FCC rules permit state commissions to order additional unbundling. "A state commission must comply with the standards set forth in this § 51.317 when considering whether to require the unbundling of additional network elements."[121] Additional unbundling by state commissions is sanctioned by the FCC.

The FCC gave specific direction in the UNE Remand Order about unbundling packet switching if CLECs to prove that lack of access to packet switching impairs their ability to offer advanced services.

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120 Illinois Arbitration Decision, p. 32.
121 47 CFR § 51.317(b)(4).

> We note, however, that (CLECs) are free to demonstrate to a state commission that lack of access to the incumbent's frame relay network element (a form of packet switching) impairs their ability to provide the services they seek to offer. A state commission is empowered to require incumbent LECs to unbundle specific network elements used to provide frame relay service, consistent with the principles set forth in this order.[122]

Here, using the authority granted by the FCC, the Commission specifically can and should declare the packet switching elements of Project Pronto to be network elements that must be offered to CLECs on a non-discriminatory, unbundled basis.

Using this federal authority this Commission can order additional unbundling under W.S.A. §§ 196.219 and 196.203. The Commission should apply the impair standards from FCC Rule 51.317(b)(2). Sprint detailed above that it is impaired without access to the Project Pronto network elements, including the packet switching elements.[123] Briefly, Sprint demonstrated that is impaired without access to the Project Pronto UNEs because (1) the Broadband Offering is a service offering that can be withdrawn at any time and is not subject to state commission oversight; (2) collocation of DSLAMs are costly, timely and inefficient; and (3) the existing copper loop network will not allow Sprint to deploy advanced services on a ubiquitous basis. If the Commission does not find that the packet switching criteria are satisfied, then using the impair analysis set forth by Sprint the Commission should determine that CLECs are impaired without access to the packet switching network elements in Project Pronto.

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122 UNE Remand Order, ¶ 312.

123 See Section III.

VI. COLLOCATION OF CLEC LINE CARDS IN PROJECT PRONTO ARCHITECTURE

To effectuate the unbundling of the various elements of Project Pronto, Ameritech must permit CLECs on a non-discriminatory basis to virtually collocate line cards in Ameritech's NGDLC equipment. CLEC placement of its own line cards allow requesting carriers to provide individualized services that differ from Ameritech's unspecified bit rate Broadband Service Offering. Ameritech's legal and regulatory arguments against line card collocation must be ignored.[124] There can be no question that, in order to be eligible for collocation, line cards must be technically compatible with the ILECs' NGDLC equipment. Thus, to the extent Ameritech rests its objections on allegations that incompatible line cards could harm or disrupt the functioning of the NGDLCs, this is simply a "red herring." A simple fix to this problem is that Ameritech's vendor Alcatel should identify the line cards that are compatible with their NGDLCs.

Similarly specious is the contention of Ameritech that a line card is not a piece of "equipment" because it cannot function on a standalone basis.[125] It is hard to imagine any component of a telecommunications network that would satisfy this definition of "equipment" - each piece-part is dependent on connections to other piece-parts in order to perform its intended function.

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[124] See II. B for a discussion of the technical compatibility and cost issues regarding line card collocation.

[125] Tr. 1150-1151; (Flatt Surrebuttal).

Moreover, the FCC concluded that the ADLU cards are advanced services equipment because the card provides functionality similar to a DSLAM.[126]

For a carrier wishing to offer advanced services to end users who are served by ILECs through NGDLCs, line cards can clearly be "necessary" for access to UNEs under Section 251(c)(6). They perform the same function as a DSLAM, and in cases where the collocation of a DSLAM is not practical, either because of a lack of space or the lack of economic subscriber density, collocation of a line card is the only feasible way the CLEC may have of accessing the ILEC's subloop elements in order to offer broadband services.

Nothing in §251(c)(6) compels a CLEC to utilize uneconomic forms of provisioning its services. Rather, the CLEC has the right to collocate technically compatible equipment at any ILEC premises so long as the equipment it wishes to collocate is necessary for access to ILEC UNEs (or interconnection), as is clearly the case with line cards.

Interpreting the same law and much of the same evidence presented here, the Illinois Commerce Commission found that the collocation of line cards is appropriate.

> The Commission finds that line cards for the provision of xDSL-based services fit the definition of equipment necessary for interconnection or access to unbundled network elements. Section 251(c)(6) of the Act requires ILECs to provide, on a nondiscriminatory basis and at just and reasonable rates, physical collocation of equipment necessary for interconnection or access to UNEs. The FCC determined in its Advanced Services Order that the pro-competitive provisions of the Act are technology-neutral and apply to advanced data services as well as to voice. ("*Advanced*

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126 Project Pronto Waiver Order, ¶ 14.

Services Order"). The FCC has also found that competitive providers of advanced services should be allowed to collocate integrated equipment that would lower the cost of providing advanced services, and increase the range of services available to their customers. *Advanced Services Order,* at ¶ 29; *UNE Remand* Order, at ¶¶ 107-115.

. . .

The evidence in this case establishes that the collocation of line cards is necessary for access to the UNEs identified by this Commission *supra. (See also,* Docket No. 00-0393, HEPO, at 16-17). Line cards are also the point of interconnection with the ILEC fiber-fed NGDLC network, substituting for a traditional DSLAM and splitter. Rhythms Exh. 7.0 (Riolo). at 9. Line cards are also the means by which CLEC s access subloops. Cross Exh. A. In the NGDLC loop network, the line cards determine what types of xDSL based services can be provided to end users. Rhythms Exh. 7.0 (Riolo), at 5. Without the ability to collocate line cards in the NGDLC chassis at the RT, xDSL providers would not be able to compete efficiently and effectively with the advanced services of the ILECs or their advanced services affiliates. Rhythms Exh. 7.0 (Riolo), at 7:8-18. [127]

In sum, the Illinois Commission heard and rejected many, if not all, of the arguments raised here by Ameritech against the collocation of line cards by CLECs in its NGDLCs. This Commission should rule that virtual collocation of plug-in cards in Ameritech's NGDLCs is necessary for interconnection to Ameritech's network elements.

VII. THE HFPL RECURRING CHARGE SHOULD BE $0

The Commission should resolve Issue 3 by ruling that the monthly recurring charge for the High Frequency Portion of the Loop (HFPL) should be $0. There simply is no incremental cost to Ameritech of delivering the HFPL UNE to a CLEC. Ameritech already recovers the full cost of the loop in its retail

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[127] Illinois Arbitration Decision, pp. 36-37.

rates for the voice portion of the loop. Ameritech's proposal to price the HFPL at 50% of the approved UNE loop rate should be rejected. This Commission should follow the two commissions in the Ameritech region that already have determined that the HFPL should have $0 monthly recurring charge.[128]

Ameritech offers no cost support for its proposal to charge CLECs 50% of the UNE loop cost. In fact, the 50% allocation factor proposed by Ameritech is nothing more than an arbitrary assessment designed to over recover the cost of the loop. Ameritech has recovered its loop costs previously from the voice frequency of the loop and incurs no additional incremental costs in providing the HFPL.[129]

The Commission should find that no monthly recurring charge is appropriate for the HFPL. By setting the price at $0, the Commission should not think that Ameritech is not fully compensated for providing line sharing to CLECs or that CLECs are receiving a free service. In fact, CLECs are paying substantial charges for other elements required in line sharing such as OSS modifications, cross connects, splitter access and other tariffed items.[130] To the extent that Ameritech will incur additional costs in the provisioning and installation of elements associated with HFPL line sharing, these costs should be recovered via an appropriate non-recurring charge using proper TELRIC methodologies. But no monthly recurring charge for the HFPL is appropriate.

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[128] Illinois Line Sharing Order; Illinois Arbitration Decision; *In the Matter of the Application of Ameritech Michigan for Approval of Cost Studies and Resolution of Disputed Issues Related to Certain UNE Offerings*, Case No. U-12540 (March 7, 2001) ("Michigan Decision").

[129] Tr. 2747 (Idoux Rebuttal).

[130] Tr. 2746 (Idoux Rebuttal).

Ameritech incurs no incremental costs in providing the HFPL. Sprint witness Idoux identified two separate occasions where Ameritech's witness, Dr. Carnall, acknowledged that there is no incremental cost associated with the HFPL. Dr. Carnall stated that "[o]n a shared line, there is no incremental cost to the low or the high frequency portion of the loop".[131] Dr. Carnall again acknowledges the fact that there is no incremental cost associated with the HFPL when he claims "[a]lthough [Mr. Idoux] is correct that Ameritech Wisconsin incurs no additional incremental costs in providing the HFPL".[132] Consequently, the only method available to Dr. Carnall to assign any cost to the HFPL is to arbitrarily assign a percentage of the total loop cost. He nor any other Ameritech witness provided any testimony, cost studies, traffic studies or any other support as to why a 50% allocation is appropriate. In fact, there is no credible evidence to support any allocation. While Sprint recommends that the charge for the HFPL be $0, the Michigan Commission gave Ameritech the option to set the charge at $0 or refund its voice customers one-half the cost of the loop.

> The Commission concludes that it must reject Ameritech Michigan's proposal to price the use of high-frequency portion of the loop at 50% of the unbundled loop rate. Although all or virtually all of the costs are common, as Ameritech says, it does not follow that the cost should be allocated evenly between the two uses of the loop.[133]

The Michigan Commission concluded that there is no incremental cost associated with the HFPL. Here too, Ameritech should not be able to collect

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131 Carnall Rebuttal Testimony at 14.
132 Carnall Surrebuttal Testimony at 2.
133 Michigan Decision, p. 13.

arbitrarily determined monthly recurring charges for costs that it already recovers in its loop rates. Consequently, this Commission should find that the appropriate monthly recurring rate for the HFPL is $0.

VIII. CONCLUSION

Wisconsin consumers have been bombarded with marketing and media messages regarding the promise of high speed data connections and innovative broadband services. But broadband data connections are the exception now instead of the rule due to the loop distance limitations for xDSL services in Ameritech's existing network. To lessen these limitations, Ameritech is extending its network away from the central offices and into neighborhoods. Ameritech stands to benefit greatly from its network investments. It will achieve significant network efficiencies and will be offer its vision of broadband services to a much larger share of the market.

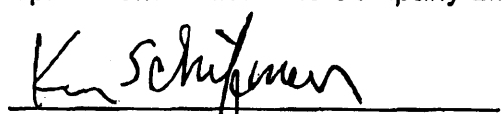
But the Commission's task of promoting competition for the benefit of Wisconsin consumers will not be achieved if it lets Ameritech offer advanced services without making its local loop architecture available to CLECs on an unbundled basis. If Ameritech is permitted to eliminate access to its loop network, Wisconsin consumers will only be exposed to Ameritech's vision of broadband services. Unbundling of the architecture permits multiple providers to offer customers innovative, different services that can fulfill the promise of broadband services. Sprint is not asking for something that is technically or economically infeasible. Ameritech admits that unbundling is technically feasible

if CLECs give Ameritech plug-in cards sanctioned by Ameritech's vendor. Further any cost concerns are cured by the development of appropriate TELRIC rates for the capacity on Ameritech's network used or reserved by CLECs. These are not new issues and should not deter a Commission unbundling decision despite Ameritech's non-deployment threats.

Threats or no threats, Ameritech's refusal to allow CLECs unbundled access to its loop network is contrary to the law. The FCC has found and the D.C. Circuit has affirmed ILECs' obligations to unbundle all telecommunications services, including advanced services. The packet switching components of Project Pronto are subject to unbundling for two reasons: (1) they meet the FCC's unbundling criteria from Rule 51.319(b)(4): and (2) even if those criteria are not met, CLECs are impaired pursuant to Rule 51.317(b) from providing advanced services in competition with Ameritech without unbundled access to Project Pronto. The Commission should follow the well-settled law and order the unbundling of Ameritech's advanced services network elements.

Respectfully submitted,

Sprint Communications Company L.P.



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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of June, 2001, copies of the foregoing were sent to the following persons on the attached list via U.S. Mail.

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